IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

JUDGMENT

1. Mahesh Kumar Sharma & Ors. **VS**. Shanti Lal & Ors.

D.B. SPECIAL APPEAL (WRIT) NO.488/2003

against the order dated 24.1.2003 passed

in S.B. Civil Writ PetitionNo.2677/2001

2. Mahesh Kumar Sharma & Ors. **VS**. Rameshwar Lal & Ors.

D.B. SPECIAL APPEAL (WRIT) NO.489/2003

against the order dated 24.1.2003 passed

in S.B. Civil Writ PetitionNo.2680/2001

Date of judgment : 23rd March, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. R.S. Saluja for the appellants.

Mr. M.R. Singhvi for the respondents.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

The issue raised in this case is about giving effect of setting aside of the termination order of the respondent-petitioners by considering their case for assignment of seniority as a result of setting aside of the termination order and considering their services to be continuous, as if the termination order was never passed.

We have discussed the principle of the determination of seniority in such cases in detail in Special Appeal No.617/2001. In this case also we do not find any merit.

Learned counsel for the Municipal Council has placed reliance on two earlier Single Bench decisions of this Court in S.B. Civil Writ Petition No.1164/92 - Ravi Dutt Sharma Vs. State of Raj. & Ors. decided on 22nd May, 2002. Suffice it to state that this case related to appointment of an Executive Officer which is not governed by the Rajasthan Municipal (Subordinate & Ministerial Service) Rules, 1963 but is governed by the Rajasthan Municipal Service Rules, 1963, which provide separate rules for the officials and there is no parallel provision like provision to Rule 8, therefore, this does not provide parallel to the facts and issue raised in this case. Similarly, another case relied on by the learned counsel for the Municipal Council is Prem Chand Sharma Vs. State of Rajasthan decided on 9.9.2002 (S.B. Civil Writ Petition

No.5882/1992), which related to appointment of Executive Officer governed by the Officers Service Rules and not by the Subordinate Service Rules and the same reason has no relevance for the issue raised in the present case.

Accordingly, this appeal is hereby dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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